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Conway, H. (2017). Rights versus responsibilities: adult children, parental wealth and contested wills. *Journal of Social Welfare and Family Law*, 39(3). <https://doi.org/10.1080/09649069.2017.1390295>

Published in:

Journal of Social Welfare and Family Law

Document Version:

Peer reviewed version

Queen's University Belfast - Research Portal:

[Link to publication record in Queen's University Belfast Research Portal](#)

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Rights versus Responsibilities: Adult Children, Parental Wealth and Contested Wills

Keywords: wills, inheritance, family provision, adult children

The Inheritance (Provision for Family and Dependants) Act 1975 allows courts in England and Wales to alter the distributive scheme of a will (or intestacy allocation), where certain statutory criteria are met (see generally Douglas, 2014). Applications are restricted to specific relatives and dependants of the deceased (listed in s 1(1) of the Act), who must demonstrate that the will (or intestacy) failed to make “reasonable financial provision” (1975 Act, s 1(2)). Success is not guaranteed, and courts must apply a range of both general and category specific factors when assessing individual claims (1975 Act, s 3(1) and ss 3(2)-(4) respectively). The recent ruling of the Supreme Court in *Ilott v The Blue Cross Society* [2017] UKSC 17; [2017] 1 FLR 1717 (also known as *Ilott v Mitson*) ends a long-running legal saga, involving an adult daughter who had been excluded from her mother’s will. This is the first time that a family provision case has reached the highest court in the UK; but while this particular litigation is now over, and the right outcome (in the author’s opinion) more or less reached on the facts, important issues remain.

The facts of the case are well-known, and can be summarised briefly. Heather Ilott and her widowed mother, Melita Jackson, had been estranged since 1978 when Heather left home to be with, and subsequently marry, a man that her mother disapproved of. Mother and daughter never reconciled (there had been several futile attempts over the years), and when Melita executed her final will in April 2002, she left her entire estate to three animal charities that she had no lifetime connection to. Melita wrote to her daughter, informing her that she would inherit nothing; Heather replied, accepting this. When Melita died in 2004, The Blue Cross, RSPB and RSPCA were gifted a net estate of £486,000. Heather Ilott, then aged 44, was mother to five children, had not worked since the birth of her first child in 1983 and was living in a 3-bedroom property rented from a Housing Association. Her husband worked part-time, and the family were dependent on state benefits to meet basic living expenses.

What followed was a lengthy legal battle. In 2007, District Judge Million ruled that the deceased had not made reasonable financial provision for her daughter under the 1975 Act, and awarded Heather £50,000 from the estate. Dissatisfied with the amount, she appealed; however, Eleanor King J set aside the decision, citing no failure to make reasonable financial provision ([2009] EWHC 3114 (Fam); [2010] 1 FLR 1613). The

Court of Appeal ruled in Heather's favour in 2011 ([2011] EWCA Civ 346; [2012] 2 FLR 170) and remitted the quantification issue back to the High Court which upheld the District Judge's award of £50,000 ([2014] EWHC 542 (Fam); [2015] 1 FLR 291). Heather appealed that decision to the Court of Appeal, which raised the amount to £143,000 to allow her to purchase the family home, with an option to draw upon a further £20,000 to supplement her state benefits ([2015] EWCA 797; [2015] 2 FLR 1490). This triggered a final appeal by the charities, to the Supreme Court. However, in March 2017, the seven Supreme Court judges- in a unanimous ruling- restored the original award of £50,000, concluding that the District Judge had not made the fundamental errors of principle alleged by the Court of Appeal when it effectively tripled the original award. In short, District Judge Million had been entitled to take account of both the lengthy estrangement and the daughter's lack of expectation of inheriting from her mother, and to limit the award made on this basis. The Court of Appeal had also erred in suggesting that the District Judge had settled on £50,000 without considering the impact on the daughter's benefits; he had addressed this issue in his judgment, but had simply settled on a less generous award than the Court of Appeal might have made.

Several points are noteworthy (see also Conway, 2017). First, the 1975 Act creates a discretionary system bounded by discrete legislative parameters; different judges can reach fundamentally different conclusions on the same set of facts, as the *Iltott* litigation demonstrates perfectly. Second, despite being something that courts try to avoid in the family law arena, conduct can be relevant in claims under the 1975 Act- and few would dispute that the enduring estrangement was a highly relevant factor in *Iltott*, and one which should have influenced the final outcome. Third, family provision claims involving contested wills stand at the intersection of two competing values: testamentary freedom versus the obligation to provide for one's family and dependants. However, the Supreme Court judgment in *Iltott* suggests a renewed emphasis on the former, and that the deceased's expressed wishes should carry significant weight in cases such as this; as Lord Hughes observed, "the order under appeal would give little if any weight...to the testator's very clear wishes" ([2017] UKSC 17 at [46]). Finally, named beneficiaries in a will do not have to justify their selection or demonstrate some sort of financial need when opposing family provision claims; the simple fact is that they were chosen by the deceased. And, in what can only be viewed as good news for charities, who rely heavily on bequests in wills, Lord Hughes in *Iltott* rejected the notion that the three animal charities here did not have a "competing need" and would "not be prejudiced" by a generous award to daughter, as the Court of Appeal had suggested ([2017] UKSC 17 at [46] citing comments at [2015] EWCA 797 at [60]).

More specifically, the *Ilott* litigation raises the broader issue of where 'independent' adult children- ie. those who are economically self-sufficient or, at least, capable of earning a living, and who were not financially dependent on a now deceased parent (even if in financial need)- fit within the current succession law narrative. Family provision claims by independent adult children have always been one of the most contentious aspects of the 1975 Act, for all sorts of reasons (Conway, 2015). These include the absence of a pre-existing financial tie; the fact that reasonable financial provision for adult children (like every category of applicant under the 1975 Act, with the exception of surviving spouses or civil partners) is limited to "maintenance" under s 1(2)(b); and courts only having one, inherently limited specific factor to weigh here: namely, the "manner in which the applicant was being, or...might expect to be, educated or trained" (1975 Act, s 3(3)). The Court of Appeal judgments in *Ilott* were seen as turning points, signifying that adult children who had been disinherited (whether wholly or partly) could succeed and be given a significant award, despite not having been financially reliant on their dead parent (Holland, 2012; Douglas, 2016). However, the Supreme Court ruling suggests otherwise, and that independent adult children who lack 'reasonable financial provision' will probably receive much less generous awards than the Court of Appeal gave Heather Illott. It also emphasises that financial need is not enough, Lord Hughes describing it as "a necessary but not a sufficient condition for an order" ([2017] UKSC 17 at [19]); and even where the applicant's needs were obvious (as in the present case, where the daughter was living in very straitened financial circumstances), these might not be met in full. Other demands on the estate, as well as the relationship between the applicant and the deceased, could act as limiting factors.

The fact that Heather Illott and her family were reliant on state benefits was another central feature of this particular litigation. In deciding that the deceased's will had failed to make reasonable financial provision for her daughter, Sir Nicholas Wall P in the first Court of Appeal ruling rejected any notion that "a claim under the [1975] Act can properly be used to relieve the State of the obligation to support an applicant" (2011] EWCA Civ 346 at [14]). And when the addressing the issue of quantification, both District Judge Million and the Court of Appeal in its second ruling in *Ilott* were cognisant of the £16,000 eligibility threshold for mean-tested benefits, structuring their awards to preserve Housing and Council Tax Benefits as a significant part of the family's net annual income (something that the Supreme Court did not query). One might question whether, in an era of reduced public spending and ongoing welfare reforms, Melita Jackson should have been able to leave an estate worth almost half a million pounds to three animal welfare charities while her daughter and her family survived almost exclusively on benefits and a small sum of savings. As Lady Hale pointed out in *Ilott*, our succession

law “has not, or not yet, recognised a public interest in expecting or obliging parents to support their adult children so as to save the public money” ([2017] UKSC 17 at [65]). Replacing state provision with estate provision in cases such as these would be extremely controversial, raising complex issues of law and social policy. Whether or not that debate occurs sometime in the future remains to be seen.

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